

# BEST PRACTICES FOR WATER QUALITY TRADING

## JOINT REGIONAL AGREEMENT

### 1.5.1. Approving new and modified best management practices for use in trading programs

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This section describes elements of a general process for receiving and processing requests to approve new Best Management Practices (BMPs) or modify existing BMPs for eligibility in trading programs. The general architecture of a process for approving new or modifying existing BMPs includes pre-proposal, practice review, and approval phases.

#### 1.5.1 Approving and modifying best management practices for use in trading programs

**Draft Best Practice:** *To ensure quality and transparency around BMPs that are used to generate water quality credits, a state agency or approved third party may provide a process for formal review and approval of BMPs to be used in trading programs.*

**Commentary:** Not all BMPs are appropriate for generating credits, it's important to develop a system that is able to evaluate and incorporate those BMPs that are effective in improving water quality and can be reliably quantified into credits. As new BMPs or modifications to existing BMPs are proposed, states should seek to review and evaluate them in a timely manner.

The scale at which BMPs are approved as eligible for trading will vary. In some cases, BMPs may be designated eligible for trading statewide to avoid redundant evaluation of BMPs that are known to be widely applicable. Programs may also consider approving BMPs for trading at the watershed level, particularly where the applicability of available information around the BMP is limited to that specific geography, or in an NPDES permit where the offset is for a new discharger. A tiered approach would involve selecting BMPs for use in a specific watershed's trading program from a larger list of BMPs that have been approved for trading at the statewide level. Review bodies may differ across states.

#### 1.5.1a Pre-proposal

**Draft Best Practice:** *A state agency or approved third party may screen a proposed BMP before initiating formal practice review. If proposal screening occurs, and the screener determines that a proposed BMP will fail to qualify for formal practice review, the screener should notify the BMP proponent with overall feedback, recommendations for revision, and instructions for resubmission of the BMP proposal.*

**Commentary:** A water quality trading program may receive numerous requests to evaluate specific BMPs for inclusion in the program. A pre-proposal phase allows agencies to provide practice proponents with guidance early on, weed out inappropriate proposals, and prioritize requests so that most effective BMPs are identified and supported for use.

States should provide clear guidance on the information that must be provided for pre-proposal submissions. Requiring more information early on will give reviewers a better understanding of the

proposed practice and may ensure that practice proponents are committed to the process. However, more information also increases the risk, time and resources a BMP proponent must invest for a pre-proposal, reducing the benefit of the phase for a BMP proponent. States should also provide guidance on the evaluation criteria that will be applied and reasons why a BMP might be rejected. Rejection at the pre-proposal phase may result because the BMP is not consistent with broader watershed goals, the science necessary to support reliable credit quantification is not available, the practice does not create a net positive impact (e.g. load of the target pollutant moves elsewhere, or loading of another pollutant increases) or simply because the proposal was incomplete.

#### **Areas for Additional Investigation**

- Determine whether there is a need to define or limit those who may submit a pre-proposal.
- Define information required in a pre-proposal submission.
- Determine whether to establish a prioritization for BMP review or review BMPs sequentially based on submission date.

#### **1.5.1b Practice Review**

**Draft Best Practice:** *After a BMP qualifies for formal review, the agency, designated third party, and/or relevant technical workgroup may convene a review panel representing expertise on the relevant practice, geography, and pollutant(s). The BMP proponent would then submit a BMP package for formal review.*

**Commentary:** Evaluating BMP for trading can involve significant work to develop definitions, quantification metrics, and monitoring frameworks, all of which will also need to be reviewed and evaluated.

States should provide clear guidance on what information needs to be submitted and who develops that information (e.g. the BMP proponent or agency staff). Clear expectations may help reduce costs and confusion while increasing the overall pace towards approval. In most cases, information developed to support BMP review should address the following:

- A description of the BMP and how it works;
- where the BMP should be applied (appropriate site conditions);
- potential side effects and ancillary benefits;
- design, installation, operation, and maintenance requirements;
- monitoring requirements;
- technical summary of credit quantification method, as described in the draft best practice for credit quantification; and
- substantiating information.

In some states, review and technical analysis may be conducted internally, while in others, stakeholders and outside experts will play a role in both the review and technical analysis. Where external experts are engaged in BMP review, states should provide clear guidance on the necessary qualifications of those experts and the process through which they are chosen. As necessary, the review panel may provide review and guidance to the BMP proponent, prompting modifications, further research, and/or field testing, before the BMP is recommended for approval.

**Areas for Additional Investigation**

- Investigate options for standards to govern the quality of data submitted for review.
- Further discussion on how many experts should be included in a review and how experts are chosen. Is there a minimum that should be considered?
- Explore how the BMP package development and review is funded.

**1.5.1c Practice Approval**

**Draft Best Practice:** *The decision to approve a new BMP or modification of an existing BMP should document confirmation that review has occurred, an assessment of the review panel's recommendation, and confirmation that all necessary documentation is in place.*

**Commentary:** none

**Areas for Additional Investigation:**

- Should public notice and comment period be included in the Draft Best Practice?